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In the High Court of Judicature at Madras

Dated: 03.02.2006

Coram

The Honourable Mr.JUSTICE P.D.DINAKARAN
and
The Honourable Mr.JUSTICE P.P.S.JANARTHANA RAJA

Civil Miscellaneous Appeal No.87 of 2006
& C.M.P.No.297 of 2006

M/s.Sindhu Cargo Services Ltd.,
Classic Towers, 1547, Trichy Road,
Coimbatore.
represented by its Director,
Sri G.Balraj .... Appellant

.Vs.

1. Commissioner of Customs
6/7, A.T.D. Street, Race Course Road,
Coimbatore - 641 018.

2. Customs, Excise and Service Tax Appellate Tribunal
South Zonal Bench,
1st floor, Shastri Bhavan Annexe,
Haddows Road, Chennai - 6
represented by its Registrar .... Respondents

Civil Miscellaneous Appeal filed under Section 130A of the Customs Act, 1962 against the order dated 08.12.2005 in final order No.1539 of 2005 on the file of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai received by the appellant on 9.12.2005.

For Appellant : Mr.Madhan Babu

For Respondents: Mr.J.Ravindran, CGSC

J U D G M E N T
(Judgment of the Court was made by P.D.DINAKARAN,J)

By consent of both parties, the Civil Miscellaneous Appeal itself is taken up for final disposal.

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2. This appeal is directed against the order dated 8.12.2005 communicated to the appellant by proceedings dated 9.12.2005 made in final order No.1539 of 2005 raising the following substantial questions of law:

i) Whether the order of respondents ordering interim suspension of Custom House agency license as punishment is ultra vires Regulation 20(2) of the Customs House Agency License Regulations, 2004?

ii) Whether the Tribunal is correct in confirming interim suspension of license in the absence of any immediacy for suspension as mandated in Regulation 20(2) of the Customs House Agency License Regulations, 2004?

iii) Whether the respondents are right in interposing two basic conditions of prima facie case and immediacy of action as mandated under Regulation 20(2) of the Customs House Agency License Regulations, 2004 for ordering interim suspension of Customs House Agency License while the same are independent factors?

iv) Whether the Tribunal was right in upholding the interim suspension when the basic criteria for suspension as mandated under Regulation 20(2) of the Customs House Agency License Regulations, 2004 is not satisfied?

3.1. The matter arises under the Customs House Agents Licensing Regulations, 2004, Regulations framed exercising the powers conferred under Section 146(2) of the Customs Act 1962, in the matter of granting licence to the Customs House Agents, namely, a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station.

3.2. As per Clause 3 of the Regulation, no persons shall carry on business as a Customs House Agent relating to the entry or departure of a conveyance or the import or export of goods at any Customs Station unless such person holds a licence granted under the said regulation. Clause 4 of the Regulation provides for invitation of applications for the grant of licence. Clause 5 prescribes the details to be provided in the application. Clause 6 prescribes the conditions to be fulfilled by the applicant. Clause 7 provides the procedure for scrutiny of the application for licence. Clause 8 empowers the Director General

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of Inspection to conduct an oral examination of the details prescribed by the applicant before granting licence with regard to the subject matters mentioned thereunder. After following the said procedure, the licence shall be granted by the Commissioner of Customs under Clause 9 as required under Clause 11 of the said Regulation. Pursuant to which, the agent is expected to execute a bond and furnish security.

3.3. As per clause 12, the licence thus granted under the Regulation is not transferable. Clause 13 prescribes the obligations to be discharged mandatorily by the agent. In the case of Agent or firm or company, as per Clause 14,15 and 16, the change of Directors and the constitution are required to be informed. Clause 18 requires the agent to maintain the accounts and Clause 19 deals with the employment of persons.

4. For the purpose of the above appeal, it is relevant to extract the following provisions, which deal with the suspension or revocation of the licence:

> 20. Suspension of revocation of licence – (1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely:-
>
> (a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;
>
> (b) failure of the Customs House Agent to comply with any of the provisions of these regulations,within the jurisdiction of the said Commissioner of Customs or anywhere else;
>
> (c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.
>
> (2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.

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> 21. Prohibition.- Notwithstanding anything contained in regulation 22, the Commissioner of Customs may prohibit any Customs House Agent from working in one or more sections of the Customs Station, if he is satisfied that such Customs House Agent has not fulfilled his obligations as laid down under regulation 13 in relation to work in that section or sections.
>
> 22. Procedure for suspending or revoking licence under Regulation 20- (1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit, within such time as may be specified in the notice not being less than forty-five days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner or Customs or Assistant Commissioner of Customs.

5.1. In the instant case, the first respondent by proceedings dated 10.10.2005 having satisfied that immediate action is necessary to suspend the licence granted to the appellant, where an enquiry against the appellant is contemplated, by exercising the powers conferred under Regulation 20(2) of the said Regulations enclosing the grounds on which the suspension pending enquiry is proposed, called upon the appellant to submit their written explanation and also as to whether they wish to be heard in person in the matter.

5.2. In the order of suspension pending enquiry, even dated, made under Section 20(2) of the said Regulation, as referred to above, it is mentioned that the petitioner had violated Regulations 13(a)(d)(e) and 19(8) and also prima facie satisfied that the appellant/agent have actively connived, colluded and helped to defraud the Government to the tune of Rs.3.5 crores (approximately) by producing false documents, fraud certificates and fradulent claims for non existing export companies. As the money is yet to be recovered and the investigation has not yet completed, the Commissioner prima facie satisfied that it is essential to cancel the licence.

5.3. It is further observed that in the investigation already carried on reveals that

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(i) the Customs House Agent has failed to obtain authorization from his clients for processing documents in Customs, hence it appears that the CHA has not complied with regulation 13(a) of CHALR, 2004.

(ii) the Customs House Agent failed to advice his clients to comply with provisions of the Customs Act 1962 and thus failed to comply with the obligation caused upon them in terms of regulation 13(d) of the CHALR 2004.

(iii) the Customs House Agent failed to exercise due diligence to ascertain the correctness of any information with regard to work handled in his name thus it appears that the CHA has failed to comply with the obligation under regulation 13(e) of CHALR, 2004.

(iv) the Customs House Agent did not have control over the Customs clearance work and there by failed to exercise supervision ensuring proper contact of the persons who transacted business. Hence the CHA apparently failed to comply with the provisions of regulation 19(8) of the CHALR, 2004

and thus the Customs House Agent had failed to comply with the above regulations.

5.4. For these reasons, the Commissioner having satisfied that prima facie case exists warranting immediate action against the Customs House Agent, exercising the power conferred under Regulation 20(2) of the Customs House Agents Licensing Regulations, 2004, passed an order of suspension pending cancellation proceedings. Concededly, the appellant has also submitted their written explanation to the notice dated 10.10.2005 on 10.11.2005 itself.

6. Aggrieved against the order of suspension dated 10.10.2005 pending enquiry for the proposed cancellation of the licence, the appellant preferred an appeal before the Customs, Excise, Service Tax Appellate Tribunal and the Tribunal by an order dated 8.12.2005, which is impugned in the present appeal, confirmed the order of suspension and directed the Commissioner of Customs to pass final order within a period of four weeks from 8.12.2005 after duly considering the explanation offered by the appellant on 10.11.2005. The Tribunal also observed that if no final orders are passed as indicated above, the order of suspension pending enquiry would stand set aside automatically. Hence, the present appeal.

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7. At the risk of repetition, we extract the substantial questions of law raised by the appellant in this appeal.

i) Whether the order of respondents ordering interim suspension of Custom House agency license as punishment is ultra vires Regulation 20(2) of the Customs House Agency License Regulations, 2004?

ii) Whether the Tribunal is correct in confirming interim suspension of license in the absence of any immediacy for suspension as mandated in Regulation 20(2) of the Customs House Agency License Regulations, 2004?

iii) Whether the respondents are right in interposing two basic conditions of prima facie case and immediacy of action as mandated under Regulation 20(2) of the Customs House Agency License Regulations, 2004 for ordering interim suspension of Customs House Agency License while the same are independent factors?

iv) Whether the Tribunal was right in upholding the interim suspension when the basic criteria for suspension as mandated under Regulation 20(2) of the Customs House Agency License Regulations, 2004 is not satisfied?

8. Mr.Madhan Babu, learned counsel appearing for the appellant raising the above substantial questions of law submits that the impugned order of suspension amounts to an order of punishment by itself. Incidentally, the learned counsel submits that the procedure contemplated under Regulation 22 of the said Regulation, namely, a notice in writing is required to be given before passing an order of suspension, has not been complied with by the respondent. He also contends that the order of suspension pending enquiry suffers from non application of mind by the respondents with regard to Regulation 20(2) of the said Regulation, viz. whether an immediate action for initiating such order of suspension pending enquiry is necessary under the facts and circumstances of the case.

9. In this regard, reliance is placed on the decision of this Court in the case of East West Freight Carriers (P) Ltd. V. Collr. Of Customs, Madras reported in 1995 (77) E.L.T. 79 (Mad.)

10. There cannot be any dispute as to the proposition of law laid down in the case of East West Freight Carriers (P) Ltd. V. Collr. Of Customs, Madras reported in 1995 (77) E.L.T. 79

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(Mad.), that the commissioner should satisfy himself that too apply his mind before passing an order of suspension under Regulation 20(2) as to whether immediate action is necessary or not, where enquiry against the Agent is pending or contemplated.

11. In the instant case while the first respondent proposed to pass an order of suspension has clearly observed in paragraph 10 and 11 of the order what facts and circumstances of the case warranted the first respondent to initiate the proceedings for suspension of the licence, which warranted the first respondent to pass an order of suspension pending cancellation proceedings under Regulation 20(2). Once the respondents are satisfied that prima facie case is made out to initiate cancellation proceedings under Regulation 22(1), consequently an order passed under Regulation 20(2) for suspending the licence pending such cancellation proceedings cannot be construed as a punishment by itself, inasmuch as the power conferred under Regulation 20(2) empowers the first respondent to pass an order of suspension pending enquiry, having satisfied that an immediate action is necessary for the reasons mentioned in the order itself.

12. An order of suspension, pending enquiry, passed under Regulation 20(2) cannot be construed as an order of punishment nor as an order of suspension, which deals only the substantial punishment, intended in Regulation 22(1) nor such an order of suspension, pending enquiry, would stand as a stigma on the appellant while the respondent proposed to pass final orders by following the procedure prescribed under Regulations. Therefore, the reference to Section 22(1) of the said Regulation and the context made in that regard by the learned counsel for the appellant is totally misnomer, inasmuch as the interim suspension passed under Regulation 20(2) pending cancellation proceedings shall not an order of punishment.

13. Accordingly, answering all the questions of law, we do not see any reason to interfere with the order of the Tribunal dated 8.12.2005. The appeal stands dismissed. However, the dismissal of this appeal in any event will not be construed as prejudicial to the appellant in the proceedings pending before the authorities. No costs. Consequently, C.M.P.No.297 of 2006 is also dismissed.

sl

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. Commissioner of Customs
   6/7, A.T.D. Street, Race Course Road,
   Coimbatore - 641 018.

2. The Registrar
   Customs, Excise and Service Tax Appellate Tribunal
   South Zonal Bench,
   1st floor, Shastri Bhavan Annexe,
   Haddows Road, Chennai - 6

+ one cc to Mr.J.Ravindran, ACGSC (Sr.No.5120)
+ one cc to Mr.Sathish Parasaran, Advocate Sr.No.4756

TEJ (CO)
RSM/13.3.2006

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& C.M.P.No.297/2006

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